

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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IN RE 650 FIFTH AVENUE AND :
RELATED PROPERTIES :
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USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
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DATE FILED:

SEP 09 2013

08 Civ. 10934 (KBF)
and all member and
related cases

ORDER

KATHERINE B. FORREST, District Judge:

At the September 4, 2013, final pretrial conference, the Court ruled that the Government would not be permitted to “claw back” two documents – Exhibits A and B to the letter of Mr. Ruzumna dated August 28, 2013 – that the Government now states are privileged but were inadvertently disclosed to claimants. The Court deemed that the Government had waived any assertion of privilege with respect to Exhibit A, as that document had been used in a prior deposition without objection. However, the Court permitted the Government to move for reconsideration as to Exhibit B, which was not used in any deposition.

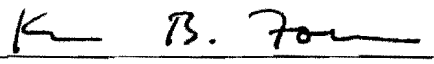
The Court has now reviewed the Government’s letter motion for reconsideration dated September 6, 2013, and the Alavi response of September 8, 2013. The Government’s briefing demonstrates that Exhibit B contains information regarding ongoing and future investigations that is absent from Exhibit A. As such, the Court finds that Exhibit B is subject to the deliberative process privilege. The Court further finds that the Government has not waived privilege by failure to object to claimants’ use of the document or failure to do so in a timely manner.

Rather, the Protective Order governing this matter and the normal procedures under the Federal Rules mandate that, absent a waiver, privileged documents inadvertently produced are subject to "claw back". It is therefore

ORDERED that claimants shall return Exhibit B to the Government; its use by any party is precluded. Further, claimants shall ensure that any docket entries including or mentioning the substance of Exhibit B are redacted. The Court's ruling that the Government waived its privilege with respect to Exhibit A stands.

SO ORDERED.

Dated: New York, New York
September 9, 2013


KATHERINE B. FORREST
United States District Judge